

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

May 2, 2013

A meeting of the Board of Environmental Protection was held on Thursday, May 2, 2013 at the Elks Lodge, 397 Civic Center Drive, Augusta, Maine. Robert Foley, Chair, called the meeting to order at 9:00 am with the following individuals:

Board: Present: Alvin Ahlers, Thomas Eastler, Elizabeth Ehrenfeld, Robert Foley, M. Wing Goodale, Richard Gould, and Susan M. Lessard.

Staff: Michael Kuhns, Director, Bureau of Land and Water Quality
Mark Bergeron, Director Division of Land Resources Regulation
Dawn Hallowell, Licensing and Compliance Manager
Erle Townsend, Environmental Special III, Bureau of Land and Water Quality

Others: Patricia Aho, DEP Commissioner
Peggy Bensinger, Assistant Attorney General
Cynthia S. Bertocci, BEP Executive Analyst
Ruth Ann Burke, BEP Clerk and Administrative Assistant

Note: At the beginning of the meeting, the audio recorder malfunctioned. Persons attending the meeting did not object to proceeding. The recorder subsequently began functioning and the majority of the meeting, including the entirety of the Saddleback matter, was recorded electronically.

Draft Pending Board Approval

I. Departmental

A. Commissioner's Comments:

- Metallic Mineral Mining: Commissioner Aho noted that staff members are working on the rules as directed by the Legislature. Given the complexity of the issues, she would like to have staff brief the Board this summer prior to the start of formal rulemaking. Board members indicated that such a briefing would be helpful.
- Bowers Mountain Wind Energy Development: The Department held a 2 day public hearing on this wind energy application earlier this week at Lee Academy in Lee.
- National Air Quality Awareness Week: Commissioner Aho stated that the Department is taking this opportunity to remind Mainers of the resources available for citizens to track the state's air quality.

B. Comments from the BEP Chair: The Chairman noted that this meeting marks the completion of Board Member Elizabeth Ehrenfeld's two terms on the Board.

C. Executive Analyst Comments: None

D. Board Calendar: Reviewed. The May 16, 2013 meeting will be at the Civic Center.

E. Departmental Orders / Applications Accepted for Processing: Reviewed

F. Executive Session: None

II. Consent Agenda Items:

1. BEP Meeting Minutes: March 21, 2013 (approval)
The Board voted (6-0-0-1) on a motion to approve the minutes for March 21, 2013 as presented.

The vote was taken pursuant to 38 M.R.S. § 341-D.

Board members Alvin Ahlers, Thomas Eastler, Elizabeth Ehrenfeld, Robert Foley, Richard Gould, and Susan Lessard voted to support the motion. Board member M. Wing Goodale abstained.

III. Regular Agenda Items:

1. Saddleback Ridge Wind LLC / #L-25137-24-A-N and #L-25137-TG-B-N
Remand by Maine Supreme Judicial Court / Procedural Discussion
Staff: Cynthia Bertocci, Board Executive Analyst

On October 6, 2011, the Department issued a Site Location of Development Act and Natural Resources Protection Act permit for the Saddleback Ridge Wind Project which granted approval with conditions for a 33 MW wind energy generation facility consisting of 12 turbines and associated facilities. The Department's licensing decision was subsequently appealed to the Board by Friends of Maine's Mountains, Friends of Saddleback Mountain, and Rand Stowell. In an order dated February 18, 2012, the Board denied the appeal and affirmed the Department's approval of the application. The Board's decision was subsequently appealed to the Maine Law Court.

The Law Court, in a decision dated March 5, 2013, vacated the Board's order and remanded the matter for further review using the 42 dBA nighttime sound level limit set forth in Chapter 375 § 10(l)(2)(b), which was a provisionally adopted rule of the Board at the time of the Board's decision on the appeal.

At the Board meeting, the Board heard from representatives of the parties, appellants Friends of Maine's Mountains *et al.* and the applicant Saddleback Ridge Wind LLC regarding the procedure for consideration of this matter on remand. The presentations by the parties focused on whether the matter is properly before the Board or the Commissioner.

Following presentations by the parties and response to Board questions, Chair Foley invited comment from Board members on the procedure to be followed. Mr. Foley stated that he will be issuing a procedural order establishing the procedure. No vote was taken.

At the conclusion of business, Mr. Foley presented Ms. Ehrenfeld with a plaque recognizing her distinguished service to the people of the State of Maine as a member of the Board of Environmental Protection from 2005-2013.

(The meeting adjourned at approximately 10:15 a.m.)